AUTHENTICATED,
OHIO LEGISLATIVE SERVICE
COMMISSION
DOCUMENT #347373

Ohio Administrative Code

Rule 122:15-3-01 Definitions.

Effective: October 9, 2020

The following definitions apply to thischapter.

(A) "Association" means an association organized pursuant to Chapter 1785. of the Revised Code.

(B) "Bidder" means any individual(s) that intend to submit or does submit a bid or a proposal to the state of Ohio for the purpose of entering into an agreement or contract.

(C) "Contract" means any agreement or subcontract with the state to provide goods or information technology, construction, architecture, engineering, or professional services.

(D) "Contractor" means any entity including a sole proprietorship, partnership, corporation, limited liability company, or joint venture that enters into a contract with the state of Ohio.

(E) "Control" means the at least fifty-one per cent eligible owner(s) possess the authority to control (but not limited to) management and policy decisions, day-to-day operations, personnel, major decisions, and the direction of the business.

(1) Control is comprised of (but not limited to) three parts: operational control, managerial control, and independence. The at least fifty-one per cent eligible owner(s) are to have technical competence, managerial ability, and knowledge directly related to the type of business in which the business is engaged.

(2) The at least fifty-one per cent eligible owner(s) have the ability to intelligently and critically evaluate information presented by other participants in the business's activities and to use this information to make independent decisions concerning the business's daily operations, management, and policymaking. Generally, expertise limited to only office management, administration, or bookkeeping functions unrelated to the principal business activities of the business is insufficient to demonstrate control.

(3) The at least fifty-one per cent eligible owner(s) cannot engage in other business interests that conflict with the management of the business or prevent the individual(s) from devoting sufficient time and attention to the affairs of the business to control its activities. For example, absentee ownership of a business and part-time work in a full-time business are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it at all times it is operating.

(4) The applicant business or certified business is to be independent; its viability cannot depend on its relationship with an individual(s) or another business(es).

(F) "Coordinator" means the state equal employment opportunity coordinator.

(G) "Economically Disadvantaged Business" means a business (including its affiliates) is at least fifty-one per cent owned and controlled by a socially and economically disadvantaged individual(s) and the size of the business does not exceed the definition of a "small business" as defined by the United States small business administration (SBA) in 13 C.F.R 121.201 (2020) and calculated in accordance with 13 C.F.R 121.101 to 121.107 (2020);

(1) To be a "small business" as defined by the SBA standards, only one main North American industry classification system (NAICS) code is used to determine the company's size standard. The main NAICS code (the code in which the majority of the company's gross receipts are generated) as identified by the Ohio department of administrative services, equal opportunity division (DAS/EOD) at the time of certification or recertification is the only NAICS code used to determine a business's size standard.

(H) "Economically Disadvantaged Individual" means an individual(s) whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar business(es) that are not economically disadvantaged. Economic disadvantage is based on 13 C.F.R. 124.104 (2020).

(I) "EDGE" means the encouraging diversity, growth, and equity business assistance program created pursuant to section 123.152 of the Revised Code.

(J) "EDGE Business Enterprise" means a sole proprietorship, association, partnership, corporation, limited liability company, or joint venture certified by DAS/EOD as meeting the criteria established by DAS/EOD pursuant to section 123.152 of the Revised Code; and

(1) Owned and controlled by a citizen(s) of the United States of America, who is a full-time resident(s) of the state of Ohio, and is socially and economically disadvantaged; or

(2) An economically disadvantaged business whose primary office is in a qualified HUBZone and the business is owned and controlled by an economically disadvantaged individual(s).

(3) For purposes of the EDGE program, "Socially Disadvantaged Individual(s)" means an individual(s) subjected to ethnic prejudices or cultural bias because of their identification with a particular group without regard to their individual qualities. A rebuttable presumption of social disadvantage is based on at least one of the following objective distinguishing factors that has contributed to social disadvantage:

(a) A business owner's race, color, or ethnic origin which includes the following groups:

(i) "Blacks" or "African Americans" means all individual(s) having origins in any of the black racial groups of Africa;

(ii) "American Indians" means all individual(s) maintaining culture and having origins in a federally recognized Indian tribe as listed in the current "Federal Register Notice of Indian Entities Recognized and eligible to receive services" from the United States bureau of Indian affairs;

(iii) "Hispanics" or "Latinos" means all individual(s) of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race; and

(iv) "Asians" means all individual(s) having origins in any of the original people of the Far East, including China, Japan, Southeast Asia, India, or Pakistan.

(b) A business owner's female gender.

(c) A business owner's chronic, physical, or mental disability that has led to discriminatory practices against the individual(s) and that has restricted professional acceptance, employment, or access to capital and credit, as compared to others in the same or similar businesses; or

(d) A business owner's long-term residence in an environment isolated from the mainstream of American society.

(e) Social disadvantage may also be based on the following:

(i) A business owner's demonstration of personal experiences of substantial and chronic disadvantage not common to other individual(s) or business(es) enterprises of the similar type and location;

(ii) Evidence of difficulty on entering or succeeding in the business world because of disadvantages such as limited access to education, limited access to credit or capital under commercially favorable circumstances or exclusion from business or professional organizations as compared to others in the same or similar businesses; or

(iii) A primary office that is located in a HUBZone.

(K) "Eligible Owner" means an individual who meets all of the ownership criteria for the program(s) for which the business is applying or is certified into, the MBE program, the EDGE program, and/or the WBE program, as set by division (E)(1) of section 122.71, and sections 123.151, 123.152, and 123.154 of the Revised Code and this chapter of the Administrative Code.

(L) "HUBZone" means a historically underutilized business zone as defined by the SBA in 13 C.F.R. 126.103 (2020).

(M) "In Business" means the business is operational as evidenced by the totality of the following circumstances: the performance of contracts; generation of revenue; having related expenses; purchase orders; invoices; payments to suppliers and/or subcontractors; payments from clients or customers; distributorship/supplier agreements; pertinent permits and authorities; vendor licenses;

professional licenses; lines of credit; equipment necessary to perform the scope of work; and any other items the DAS/EOD determines suitable for consideration.

(N) "Independent" means the business and the at least fifty-one per cent eligible owner(s) are free from the undue control, influence, support, or the like of another individual(s); business(es); and its viability is not dependent on its relationship with another individual(s), business(es) (e.g., dependent, co-dependent and/or interdependent).

(O) "Material Change" means any change in the business structure including (but not limited to): limited liability company changes to corporation; change from for profit to non-profit; state residency changes of the at least fifty-one per cent eligible owner(s); change in contributions of capital; change in control or ownership; change in articles, by-laws, partnership agreement; or change in the joint venture agreement.

(P) "MBE" means the minority business enterprise program created pursuant to section 123.151 of the Revised Code.

(Q) "MBE Business Enterprise" means a sole proprietorship, partnership, corporation, limited liability company, or joint venture certified by DAS/EOD as meeting the criteria established pursuant to section 123.151 of the Revised Code and that is owned and controlled by a citizen(s) of the United States of America who is a full-time resident(s) of the state of Ohio and is a socially disadvantaged individual.

(1) For purposes of the MBE program, "Socially Disadvantaged Individual" means an individual(s) subjected to racial prejudices because of their identification with a group without regard to their individual qualities:

(a) A rebuttable presumption of social disadvantage exists based on the business owner's membership in one or more of the following groups:

(i) "African American" or "Black" means individual(s) having origins in any of the black racial groups of Africa;

(ii) "American Indian" means individual(s) having origins in a federally recognized Indian tribe as listed in the current federal register notice of indian entities recognized and eligible to receive services from the United States bureau of Indian affairs;

(iii) "Hispanic" or "Latino" means individual(s) of Spanish or Portuguese culture with origins in Mexico, South or Central America, or Caribbean Islands regardless of race; and

(iv) "Asian" means individual(s) having origins in any of the original people of the Far East, including China, Japan, Southeast Asia, India, and Pakistan.

(R) "Noneligible Owner" means an individual who does not meet the individual ownership criteria for the program(s) for which the business is applying, the MBE program, the EDGE program, and/or the WBE program, as set by division (E)(1) of section 122.71, sections 123.151, 123.152, and 123.154 of the Revised Code and this chapter of the Administrative Code. For example, a man for the WBE program, a non-socially and economically disadvantaged individual for the EDGE program, or a non-socially disadvantaged individual for the MBE program.

(S) "One Year" means the business is "in business," "independent," "owned," and "controlled" by the same fifty-one per cent eligible owner(s) who are full-time resident(s) of the state of Ohio or a reciprocal state (if certified pursuant to division (D) of section 123.154 of the Revised Code) and United States citizen(s) for at least twelve months immediately prior to application for certification.

(T) "Owner, Owned, or Own" means at least fifty-one per cent of each class of stock, membership units, or percentage of ownership is owned by an eligible owner.

(1) The contributions of capital used to acquire ownership are "real and substantial," going beyond pro forma ownership and derived from individually and independently owned resources and in the form of tangible assets (i.e., cash or equipment). Examples of insufficient contributions include (but are not limited to) a promise to contribute capital, an unsecured note payable to the business or an eligible owner, or participation in a business's activities as an employee.

(2) Further, the at least fifty-one per cent eligible owner(s) must have an interest in the capital, assets, and profits and losses of the business proportional to the percentage of ownership.

(3) If the business is a corporation:

(a) Ownership means that at least fifty-one per cent of each class of corporate stock is owned by at least fifty-one per cent eligible individual(s) as reflected on the business's stock certificates and stock journal; and

(b) The board of directors (BOD) and the principal executive officers (PEO) reflect ownership and control by the at least fifty-one per cent eligible owner(s) because a majority of the BOD and PEO are appointed by the at least fifty-one per cent eligible owner(s).

(4) If the business is a partnership, at least fifty-one per cent of the business interest is owned by eligible owner(s) as reflected in the partnership agreement.

(5) If the business is a limited liability company, at least fifty-one per cent of the total membership units or percentage of ownership of the business is owned by eligible owner(s) as reflected in the business's unit/percentage certificates and unit/percentage journal.

(U) "Primary Office" means the location where the greatest number of employees at any one location actually perform their work and at least thirty-five percent of the business(es)'s employees reside (defined as living in a primary residence within that area for at least one hundred eighty days).

(V) "Proportional Interest" means the contributions of capital or assets by the at least fifty-one per cent eligible owner(s) is at least equal the ownership interest.

(W) "Receipts" means all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered "total income" (or in the case of a sole proprietorship "gross income") as these terms are defined and reported on internal revenue service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other

sole proprietorships).

(X) "Resident" means an individual(s) who lives and has established residency in the state of Ohio or a reciprocal state (if certified pursuant to division (D) of section 123.154 of the Revised Code) for at least one year immediately preceding application for certification and has filed personal state tax returns as a full-time resident for the preceding tax year or provides a notarized affidavit of residency provided by DAS/EOD.

(Y) "Reciprocal State" means a state that has entered into a reciprocal agreement with the state of Ohio pursuant to division (D) of section 123.154 of the Revised Code.

(Z) "Socially Disadvantaged Business" means a business at least fifty-one per cent owned and controlled by socially and economically disadvantaged individual(s) or the business is located in a HUBZone.

(AA) "State" means the state of Ohio.

(BB) "State Agency" means any organized body, office, or agency established by the laws of this state for the exercise of any function of state government.

(CC) "State University" means a state university as defined in section 3345.011 of the Revised Code.

(DD) "WBE" means the women-owned business enterprise program created pursuant to section 123.154 of the Revised Code.

(EE) "WBE Business Enterprise" means a sole proprietorship, partnership, corporation, limited liability company, or joint venture certified by the DAS/EOD as meeting the criteria established by DAS/EOD pursuant to section 123.154 of the Revised Code that is at least fifty-one per cent owned and controlled by United States of America citizen(s), who are full-time resident(s) of the state of Ohio or a reciprocal state (if certified pursuant to division (D) of section 123.154 of the Revised Code), and who is a woman.

(FF) "Woman" means an individual of the female gender.